



STATE OF CONNECTICUT  
JUDICIAL BRANCH

EXTERNAL AFFAIRS DIVISION

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Testimony of Deborah J. Fuller  
Judiciary Committee Public Hearing  
March 29, 2012

**Senate Bill 446, AAC the Amount of Bond that May be Set for Misdemeanor  
and Violation Offenses**

Senator Coleman, Representative Fox, Senator Kissel, Representative Hetherington and members of the Judiciary Committee, thank you for the opportunity to testify on *Senate Bill 446, An Act Concerning the Amount of Bond that May be Set for Misdemeanor and Violation Offenses*. The Judicial Branch is concerned that the requirements of the bill would impinge on the courts' authority to determine the appropriate level of bail in criminal cases.

All defendants have a constitutional right to a reasonable amount of bail, and our statutes protect that right by requiring that the court set bail in an amount "no greater ... than necessary." We have confidence that this requirement is being adhered to. While defendants have a right to appeal the amount of their bail as excessive, it virtually never happens.

The factors that must be considered in setting bond, as enumerated in the current statutes, go well beyond the offense charged. They include a number of other factors such as previous convictions, past record of appearances in court when on bail, the number of charges pending against the arrested person, the arrested person's history of violence, and the likelihood that the person will commit another crime while released. Consideration of all of these issues is essential in determining the appropriate bail amount. Some of the specific factors that might indicate that a higher amount is

required include: prior failures to appear by the defendant; a domestic violence case with previous history of domestic violence; the case involves the same victim as a previous case; the defendant is on probation for another offense; there was a weapon involved; the offense involved physical injury to the victim; the defendant has numerous pending cases; a serious threat was involved; other public safety issues, such as a defendant who has had multiple DWI's; there are outstanding warrants against the defendant; there is a parole hold on the defendant; there is an ICE hold; and the offense was a violation of conditional release.

In addition to this overriding concern, there are practical issues with this proposal. The requirement that judges and bail commissioners setting a bond of more than \$5,000 for a misdemeanor or lesser offense make "findings of fact on the record" is problematic. Judges issuing warrants under section 1 of the proposal often do so in a setting outside the courtroom, such as their home, where as a practical matter they cannot go "on the record." Furthermore, findings of fact cannot be made at this early stage of the case. At the time of arraignment judges are presented with the oral remarks of counsel and the bail commissioner; the court has not received the type of evidence that would allow findings of fact. Finally, bail commissioners are not fact-finders, so it is inappropriate to require that they make findings of fact when setting bail, which they often do in a police station, not in a setting that would allow it to be "on the record."

Finally, I would point out that subsection (b) of section 3 of the bill poses a serious issue. It appears that the \$5,000 restriction on the amount of bond that is set by this subsection would apply only to domestic violence crimes, as they are the only misdemeanors that would fall under this subsection. We do not believe that this can have been intended.

We would respectfully suggest that this type of proposal should be sent to and considered by the Sentencing Commission before being considered by the General Assembly.

Thank you for your consideration.